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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,990	12/28/2000	Jorn Borch Soe	674509-2028	9458
20999	7590	08/25/2004	EXAMINER	
FROMMERM LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			HENDRICKS, KEITH D	

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

S.C

Office Action Summary	Application No.	Applicant(s)	
	09/750,990	SOE, JORN BORCH	
	Examiner	Art Unit	
	Keith Hendricks	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 June 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 70-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 70-79 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

- i) Sweets group, recited as “candy, caramel, chocolate, pudding, halawa, [and] gum” : claims 70 and 75-79.
- ii) Dairy Products, including pudding and frozen (dairy) products: claims 70-73, and 75-79.
- iii) Baked goods: claims 70 and 75-79.
- iv) Meat products: claims 70, 74 and 75-79.
- v) Oils/Fats group, recited as “edible oils, edible fats, oil-in-water emulsions, water-in-oil emulsions... margarine, shortening, [and] spreads” : claims 70 and 75-79.
- vi) Sauces, etc. group, recited as “spreads, mayonnaise, dips, cream based sauces, cream based soups... spice emulsions, and sauces” : claims 70 and 75-79.
- vii) beverages: claims 70 and 75-79.
- viii) frozen products: claims 70 and 75-79.

EXAMINER'S NOTE # 1: Note that the terms “frozen products”, “pudding” and “spreads” occur in multiple groups. Upon election of a group containing one of these species, a search will be made as limited to the specific group only. For example, election of Group (ii) would limit the search of “frozen products” to dairy items only. Applicant is encouraged to amend the claims to reflect their election, in order to reduce pendency and future issues of prosecution.

EXAMINER'S NOTE # 2: Applicant's claims comprising a generic method utilized with specific foods has created a burdensome search, such that multiple inventions exist, as recited above. The claimed use of a lipase with various foodstuffs and ingredients would otherwise require a search of this method within a large number of different subclasses, and perhaps multiple classes. Applicant's numerous amendments to the claims during the prosecution of this application to arrive at the current

Art Unit: 1761

revision of applicant's invention, including the re-introduction of "baked goods", have also necessitated this requirement.

EXAMINER'S NOTE # 3: Terms such as "frozen products", "candy", "sauces", "spreads", etc. improperly overlap with both (a) other groups recited (as above), and/or (b) specific foodstuffs recited in the claims. This would necessitate a rejection under 35 USC 112, 2nd paragraph, as the metes and bounds of the claimed invention would not be established and clearly set forth. For example, the metes and bounds between the terms "candy" and "caramel" are unclear, as "caramel" is a subset of "candy." Note that this issue has already been addressed in the first Office action of February 27, 2002, pages 3-5.

EXAMINER'S NOTE # 4: Regarding the term "spreads", see also the 35 USC 112, 2nd paragraph rejection at page 5 of the first Office action of February 27, 2002.

Applicant is encouraged to provide claims which avoid unnecessary repetitive rejections for issues which have already been addressed. See also the Final Rejection of October 22, 2002, with regard to these issues.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 70 and 75-79 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Art Unit: 1761

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KEITH HENDRICKS
PRIMARY EXAMINER